

Equal Employment Opportunity Comm.

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investigative reports and files, and any voluntary compliance agreement.

§ 1640.12 Standards.

In any investigation, compliance review, hearing or other proceeding, the standards used to determine whether section 504 has been violated in a complaint alleging employment discrimination shall be the standards applied under title I of the ADA and the provisions of sections 501 through 504, and 510, of the ADA, as such sections relate to employment. Section 504 agencies shall consider the regulations and appendix implementing title I of the ADA, set forth at 29 CFR part 1630, and case law arising under such regulations, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

§ 1640.13 Agency specific memoranda of understanding.

When a section 504 agency amends its regulations to make them consistent with title I of the ADA, the EEOC and the individual section 504 agency may elect to enter into a memorandum of understanding providing for the investigation and processing of complaints dual filed under both section 504 and title I of the ADA by the section 504 agency.

PART 1641—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

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AUTHORITY: 42 U.S.C. 12117(b).

SOURCE: 57 FR 2962, 2964, Jan. 24, 1992, unless otherwise noted.

§ 1641.1 Purpose and application.

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section 503. Nothing in this part is intended to create rights in any person.

§ 1641.2 Exchange of information.

(a) EEOC and OFCCP shall share any information relating to the employment policies and practices of employers holding government contracts or subcontracts that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance review reports and files.

(b) All requests by third parties for disclosure of the information described in paragraph (a) of this section shall be coordinated with the agency which initially compiled or collected the information.

(c) Paragraph (b) of this section is not applicable to requests for data in EEOC files made by any State or local agency designated as a "FEP agency" with which EEOC has a charge resolution contract and a work-sharing agreement containing the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). However, such an agency shall not disclose any of the information, initially compiled by OFCCP, to the

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public without express written approval by the Director of OFCCP.

§ 1641.3 Confidentiality.

When the Department of Labor receives information obtained by EEOC, the Department of Labor shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964, as incorporated by section 107(a) of the ADA, as would EEOC, except in cases where DOL receives the same information from a source independent of EEOC. Questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.

§ 1641.4 Standards for investigations, hearings, determinations and other proceedings.

In any OFCCP investigation, hearing, determination or other proceeding involving a complaint/charge that is dual filed under both section 503 and the ADA, OFCCP will utilize legal standards consistent with those applied under the ADA in determining whether an employer has engaged in an unlawful employment practice. EEOC and OFCCP will coordinate the arrangement of any necessary training regarding the substantive or procedural provisions of the ADA, and of EEOC's implementing regulations (29 CFR part 1630 and 29 CFR part 1601).

§ 1641.5 Processing of complaints filed with OFCCP.

(a) Complaints of employment discrimination filed with OFCCP will be considered charges, simultaneously dual filed, under the ADA whenever the complaints also fall within the jurisdiction of the ADA. OFCCP will act as EEOC's agent for the sole purposes of receiving, investigating and processing the ADA charge component of a section 503 complaint dual filed under the ADA, except as otherwise set forth in paragraph (e) of this section.

(b) Within ten days of receipt of a complaint of employment discrimination under section 503 (charge under the ADA), OFCCP shall notify the contractor/respondent that it has received a complaint of employment discrimination under section 503 (charge under

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the ADA). This notification shall state the date, place and circumstances of the alleged unlawful employment practice.

(c) Pursuant to work-sharing agreements between EEOC and State and local agencies designated as FEP agencies, the deferral period for section 503 complaints/ADA charges dual filed with OFCCP will be waived.

(d) OFCCP shall transfer promptly to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction. At the same time, OFCCP shall notify the complainant and the contractor/respondent of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date OFCCP received the complaint will be deemed the date it was received by EEOC.

(e) OFCCP shall investigate and process as set forth in this section all section 503 complaints/ADA charges dual filed with OFCCP, except as specifically provided in this paragraph. Section 503 complaints/ADA charges raising Priority List issues, those which also include allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin, and those which also include an allegation of discrimination on the basis of age will be referred in their entirety by OFCCP to EEOC for investigation, processing and final resolution, provided that such complaints/charges do not include allegations of violation of affirmative action requirements under section 503. In such a situation, OFCCP will bifurcate the complaints/charges and refer to EEOC the Priority List issues or allegations of discrimination on the basis of race, color, religion, sex, national origin, or age. OFCCP shall normally retain, investigate, process and resolve all allegations of discrimination, over which it has jurisdiction, of a systemic or class nature on the basis of race, color, religion, sex, or national origin that it receives. However, in appropriate cases the EEOC may request that it be referred such allegations so as to avoid duplication of effort and assure effective law enforcement.

(1) *No cause section 503 complaints/ADA charges.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of no violation under section 503 (no cause under the ADA), OFCCP will issue a determination of no violation/no cause under both section 503 and the ADA, and issue a right-to-sue letter under the ADA, closing the complaint/charge.

(2) *Cause section 503 complaints/ADA charges—(i) Successful conciliation.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of violation under section 503 (cause under the ADA), OFCCP will issue a finding of violation/cause under both section 503 and ADA. OFCCP shall attempt conciliation to obtain appropriate full relief for the complainant (charging party), consistent with EEOC's standards for remedies. If conciliation is successful and the contractor/respondent agrees to provide full relief, the section 503 complaint/ADA charge will be closed and the conciliation agreement will state that the complainant (charging party) agrees to waive the right to pursue the subject issues further under section 503 and/or the ADA.

(ii) *Unsuccessful conciliation.* All section 503 complaints/ADA charges not successfully conciliated will be considered for OFCCP administrative litigation under section 503, consistent with OFCCP's usual procedures. (See 41 CFR part 60-741, subpart B.) If OFCCP pursues administrative litigation under section 503, OFCCP will close the complaint/charge at the conclusion of the litigation process (including the imposition of appropriate sanctions), unless the complaint/charge is dismissed on procedural grounds or because of a lack of jurisdiction, or the contractor/respondent fails to comply with an order to provide make whole relief. In these three cases, OFCCP will refer the matter to EEOC for any action it deems appropriate. If EEOC declines to pursue further action, it will issue a notice of right-to-sue. If OFCCP does not pursue administrative enforcement, it will close the section 503 component of the complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA. If EEOC declines to litigate, EEOC will close

the ADA charge and issue a notice of right-to-sue.

(f) Consistent with the ADA procedures set forth at 29 CFR 1601.28, OFCCP shall promptly issue upon request a notice of right-to-sue after 180 days from the date the complaint/charge was filed. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of any complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of section 503 and/or the ADA to further process the complaint/charge.

(g) If an individual who has already filed a section 503 complaint with OFCCP subsequently attempts to file or files an ADA charge with EEOC covering the same facts and issues, EEOC will decline to accept the charge (or, alternatively, dismiss a charge that has been filed) on the grounds that such charge has already been filed under the ADA, simultaneous with the filing of the earlier section 503 complaint, and will be processed by OFCCP in accordance with the provisions of this section.

§ 1641.6 Processing of charges filed with EEOC.

(a) *ADA cause charges falling within the jurisdiction of section 503 that the Commission has declined to litigate.* ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has declined to litigate will be referred to OFCCP for review of the file and any administrative action deemed appropriate under section 503. Such charges will be considered to be complaints, simultaneously dual filed under section 503, solely for the purposes of OFCCP review and administrative action described in this paragraph.

(b) *ADA charges which also include allegations of failure to comply with section 503 affirmative action requirements.* ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503 are made, will be referred in their entirety to OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include allegations of discrimination on the basis of race, color, religion, sex, national origin or

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age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In such situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for processing and resolution under section 503. ADA charges which raise both discrimination issues under the ADA and section 503 affirmative action issues will be considered complaints, simultaneously dual filed under section 503, solely for the purposes of referral to OFCCP for processing, as described in this paragraph.

(c) EEOC shall transfer promptly to OFCCP a charge of disability-related employment discrimination over which it does not have jurisdiction, but over which OFCCP may have jurisdiction. At the same time, EEOC shall notify the charging party and the contractor/respondent of the transfer, the reason for the transfer, the location of the OFCCP office to which the charge was transferred and that the date EEOC received the charge will be deemed the date it was received by OFCCP.

(d) Except as otherwise stated in paragraphs (a) and (b) of this section, individuals alleging violations of laws enforced by DOL and over which EEOC has no jurisdiction will be referred to DOL to file a complaint.

(e) If an individual who has already filed an ADA charge with EEOC subsequently attempts to file or files a section 503 complaint with OFCCP covering the same facts and issues, OFCCP will accept the complaint, but will adopt as a disposition of the complaint EEOC's resolution of the ADA charge (including EEOC's termination of proceedings upon its issuance of a notice of right-to-sue).

§ 1641.7 Review of this part.

This part shall be reviewed by the Chairman of the EEOC and the Director of OFCCP periodically, and as appropriate, to determine whether changes to the part are necessary or

desirable, and whether the part should remain in effect.

§ 1641.8 Definitions.

As used in this part, the term:

ADA refers to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

Affirmative action requirements refers to affirmative action requirements required by DOL pursuant to section 503 of the Rehabilitation Act of 1973, that go beyond the nondiscrimination requirements imposed by the ADA.

Chairman of the EEOC refers to the Chairman of the U.S. Equal Employment Opportunity Commission, or his or her designee.

Complaint/Charge means a section 503 complaint/ADA charge. The terms are used interchangeably.

Director of the Office of Federal Contract Compliance Programs refers to that individual or his or her designee.

DOL means the U.S. Department of Labor, and where appropriate, any of its headquarters or regional offices.

EEOC means the U.S. Equal Employment Opportunity Commission, and where appropriate, any of its headquarters, district, area, local, or field offices.

Government means the government of the United States of America.

Priority List refers to a document listing a limited number of controversial topics under the ADA on which there is not yet definitive guidance setting forth EEOC's position. The Priority List will be jointly developed and periodically reviewed by EEOC and DOL. Any policy documents involving Priority List issues will be coordinated between DOL and EEOC pursuant to Executive Order 12067 (3 CFR, 1978 Comp., p. 206) prior to final approval by EEOC.

OFCCP means the Office of Federal Contract Compliance Programs, and where appropriate, any of its regional or district offices.

Section 503 refers to section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793).

Section 503 complaint/ADA charge refers to a complaint that has been filed with OFCCP under section 503 of the Rehabilitation Act, and has been deemed to be simultaneously dual filed with EEOC under the ADA.